

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MILTON ERNESTO FLORES-MANCIA,

CASE NO. 11cr2340 and
11cv2945-LAB

Plaintiff,

vs.

UNITED STATES,

**ORDER DENYING 28 U.S.C.
§ 2255 HABEAS MOTION**

Defendant.

Milton Ernesto Flores-Mancia pleaded guilty of being a deported alien found in the United States in violation of 8 U.S.C. § 1326. On December 8, 2011 he was sentenced to 18 months' custody followed by three years' supervised release. On December 14, he filed a motion pursuant to 28 U.S.C. § 2255 for a reduction in his sentence.

In his plea agreement, Flores-Mancia waived appeal or collateral attack unless he was sentenced above the high end of the guideline range recommended by the government as agreed in the plea agreement. Flores-Mancia also received the benefit of a fast-track recommendation.

The record shows the government kept its agreement, and recommended that Flores-Mancia be sentenced to 30 months, which was the low end of the guideline range the parties agreed to. (See Docket no. 15 (Plea Agreement's provisions regarding sentence recommendations) at 2–3; Docket no. 23 (Government's Sentencing Summary Chart, recommending a sentence as agreed in the Plea Agreement).) Flores-Mancia was in fact

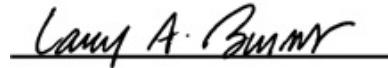
1 sentenced well below the 30 months the government recommended. He therefore waived
2 this collateral attack.

3 Even if Flores-Mancia had not waived collateral attack, his motion would be denied
4 as meritless. It is a boilerplate motion, apparently circulating among prisoners, that requests
5 a reduction in sentence because the defendant is an alien subject to deportation. The motion
6 is not meritless because it is boilerplate, but because its contentions have no basis in fact
7 or law. First, are no similarly-situated U.S. citizens who are being punished less severely for
8 the crime to which Flores-Mancia pleaded guilty; by definition, this crime can only be
9 committed by aliens who were previously deported. Second, the argument that he is entitled
10 to a lower sentence because he is a deportable alien has been repeatedly rejected by this
11 and other courts as meritless. See, e.g., *Patterson-Romo v. United States*, 2012 WL
12 2060872 (S.D.Cal., June 7, 2012) (Gonzalez, J.); *United States v. Beltran-Palafox*, 2012 WL
13 899262 at *2 and n.14 (D.Kan., Mar. 16, 2012); *Aguilar-Marroquin v. United States*, 2011 WL
14 1344251 (S.D.Cal., Apr. 8, 2011) (Huff, J.); *Rendon-Inzunza v. United States*, 2010 WL
15 3076271 (S.D.Cal., Aug. 6, 2010) (Burns, J.).

16 The motion is **DENIED**.

17 **IT IS SO ORDERED.**

18 DATED: October 4, 2012

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HONORABLE LARRY ALAN BURNS
United States District Judge